

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

HEALTH MEDICARE ULTRA, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH &
HUMAN SERVICES,

Defendant.

Civil No. 07-1743 (JAF)

O R D E R

Plaintiff, Health Medicare Ultra, Inc., brings this action against Defendant, the Department of Health & Human Resources ("DHHS"), seeking declaratory judgment and injunctive relief. Docket Document No. 1-1. Plaintiff now moves for a preliminary injunction ordering Defendant to accept Plaintiff's late bid submission for Medicare programs. Docket Document No. 2. Defendant opposes, Docket Document No. 7, and Plaintiff replies, Docket Document No. 9.

Plaintiff provided Medicare and Medicaid services for residents in the Utuado region of Puerto Rico in 2007 through a contract with DHHS' Center for Medicare & Medicaid Services ("CMS"). Docket Document No. 2. Plaintiff hired an actuarial firm, Milliman, to assist with its bid for a 2008 contract. Id. The statutory deadline for 2008 bid submissions was June 4, 2007. 42 U.S.C. §§ 1395w-24(a)(1)(A), 1395w-111(b)(1) (2006) (setting the deadline as the first Monday in June). Plaintiff, however, did not receive the necessary data from Milliman until June 5, 2007, and, therefore, did

Civil No. 07-1743 (JAF)

-2-

1 not complete its bid submission until June 6, 2007. Docket Document
2 No. 2. On June 12, 2007, CMS informed Plaintiff that CMS would not
3 accept Plaintiff's bid because it failed to meet the statutory
4 deadline. Id. On June 19, 2007, Plaintiff received a letter stating
5 that it had conditionally qualified as a contractor, but that it must
6 observe the statutory deadline. Id.

7 Plaintiff sought reconsideration of the decision to reject its
8 bid, which CMS denied on July 3, 2007. Id. On August 20, 2007,
9 Plaintiff filed a complaint in federal district court, Docket
10 Document No. 1-1, and moved for a preliminary injunction ordering
11 Defendant to accept Plaintiff's bid submission, Docket Document
12 No. 2. Defendant opposed the motion on September 14, 2007. Docket
13 Document No. 7. Plaintiff replied on September 28, 2007. Docket
14 Document No. 10.

15 Section 422.254(a)(3) of the Code of Federal Regulations
16 provides that "[i]f a bid submission . . . is not complete, timely,
17 or accurate, CMS has the authority to impose . . . sanctions . . . or
18 may choose not to renew the contract." 42 C.F.R. § 422.254(a)(3)
19 (2007). Plaintiff argues that this regulation gives Defendant
20 discretion, in the event of a late submission, either to impose
21 sanctions or to choose "not to renew the contract." Docket Document
22 No. 2 (citing § 422.254(a)(3)). Plaintiff contends that, given these
23 options, Defendant's decision to reject Plaintiff's bid was
24 "arbitrary and capricious" and that we should, therefore, overturn
25 it. Id.

Civil No. 07-1743 (JAF)

-3-

1 Defendant counters that Title XVIII of the Social Security Act
2 governs bid submissions and imposes a mandatory statutory deadline of
3 no later than the first Monday in June. Docket Document No. 7
4 (citing §§ 1395w-24(a)(1)(A), 1395w-111(b)(1)). Defendant further
5 argues that § 422.254(a)(3) does not apply in the present case
6 because the word "timely" does not refer to the bid submission
7 itself, but to the nature of the information within it. Id.
8 Plaintiff responds that we must interpret the regulation based on its
9 plain language. Docket Document No. 10.

10 We need not reach the question of the exact meaning of
11 § 422.254(a)(3), however, because we find that under either
12 interpretation, Defendant has authority to reject the bid submission.
13 On one hand, Defendant may reject the bid based on §§ 1395w-
14 24(a)(1)(A) and 1395w-111(b)(1), which provide that bids must be
15 submitted by the first Monday in June. §§ 1395w-24(a)(1)(A), 1395w-
16 111(b)(1). On the other hand, given the options provided by
17 § 422.254(a)(3), Defendant could, by choosing not to renew
18 Plaintiff's contract, also reject Plaintiff's bid. § 422.254(a)(3).
19 Because Defendant acted with statutory authority, we do not find its
20 decision to be arbitrary and capricious and, accordingly, deny
21 Plaintiff's motion for preliminary injunction, Docket Document No. 2.

22 **IT IS SO ORDERED.**

23 San Juan, Puerto Rico, this 17th day of October, 2007.

24 S/José Antonio Fusté
25 JOSE ANTONIO FUSTE
26 Chief U.S. District Judge